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8  
9 **UNITED STATES DISTRICT COURT**  
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11  
12 RAD2GO, INC. A CALIFORNIA  
CORPORATION,

13 Plaintiff,

14 vs.

15 NATIONAL SPORTING GOODS, DAVID  
16 JACOBS, GREGG ADELSHEIMER AND  
DOES 1 THROUGH 100,

17 Defendants.

CASE NO. 07-CV-1949 JLS (WMC)

18 **DEFENDANTS' NOTICE OF PETITION**  
**AND PETITION TO COMPEL**  
19 **ARBITRATION**

Date: September 4, 2008

Time: 1:30 p.m.

Ct.room: 6

Judge: Hon. Janis Sammartino

Action Filed: October 5, 2007

20 TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

21 PLEASE TAKE NOTICE that on September 4, 2008 at 1:30 p.m. or as soon thereafter as  
22 the matter may be heard before this Court in Courtroom 6, located at 880 Front Street, San Diego,  
23 California, Defendants National Sporting Goods Corporation, David Jacobs, and Gregg  
24 Adelsheimer by and through their attorneys of record Kirby Noonan Lance & Hoge LLP, will  
25 petition and hereby do petition for an order compelling arbitration of the dispute set forth in  
26 Plaintiff Rad2Go, Inc.'s Complaint. Further, Defendants will and hereby do move for a stay of the  
27 Complaint until arbitration is completed.

28 ///

1 The Petition will be made on the grounds more particularly set forth in the Petition below  
 2 and the accompanying Memorandum of Points and Authorities, but includes the ground that a  
 3 written agreement to arbitrate the dispute set forth in the Complaint exists, the transaction  
 4 evidenced by the agreement involves foreign or interstate commerce, and Plaintiff refuses to  
 5 arbitrate the dispute.

6 This Petition will be based on this Notice, the Petition stated below, the Memorandum of  
 7 Points and Authorities, the Declaration of Jacob M. Slania, the complete files and records of this  
 8 action, and on such other and further evidence, arguments and briefs as the Court may allow or  
 9 require.

#### 10 **PETITION BY DEFENDANTS TO COMPEL ARBITRATION**

11 1. This is a Petition by the Defendants to compel arbitration of the dispute set forth in  
 12 Complaint filed by Rad2Go, Inc. and for a stay of the Complaint until arbitration is completed.

13 2. This Petition is made on the grounds more particularly set forth in the  
 14 accompanying Memorandum of Points and Authorities, but includes the following: (i) a dispute  
 15 exists between Rad2Go, Inc. and the petitioning Defendants; (ii) a written arbitration agreement  
 16 between the parties covers the dispute; (iii) the transaction evidenced by the agreement involves  
 17 interstate or foreign commerce; and (iv) Rad2Go, Inc. has failed, neglected and refused to arbitrate  
 18 the dispute. *Whiteside v. Teltech Corp.*, 940 F.2d 99, 102 (4th 1991).

19 3. In March of 2002, NSG entered into a Representative Agreement with Sino  
 20 Distribution/Rad2Go. A true and correct copy of the Representative Agreement is attached to the  
 21 Complaint as Exhibit A. The arbitration agreement in the Representative Agreement provides as  
 22 follows:

23 In the event of a dispute between the parties it shall be submitted to  
 24 binding judicial arbitration in San Diego County, State of California.

25 4. The transactions evidenced by the Representative Agreement involves interstate or  
 26 foreign commerce pursuant to 9 U.S.C. § 1. In this case, the purpose of the Representative  
 27 Agreement was for the sale, marketing, and promotion of Rad2Go's electric scooters to vendors  
 28 who operated in many states, including JC Penney Corporation.

5. Rad2Go has failed, neglected and refused to arbitrate the dispute set forth in the Complaint. Among other things, Rad2Go filed its Complaint instead of seeking arbitration pursuant to the terms of the written Representative Agreement. Further, Rad2Go has refused an offer by Defendants to file a joint motion moving this dispute into arbitration.

6. The petitioning Defendants are entitled to stay the Complaint pending the arbitration. 9 U.S.C. § 3; see *Wagner v. Stratton Oakmont, Inc.*, 83 F.3d 1046, 1048 (9th Cir. 1996). Indeed a stay of the Complaint is mandatory where the claims are encompassed within an arbitration cause:

If the issues are within the reach of the agreement, the District Court has no discretion under section 3 to deny the stay.

*Hornbeck Offshore (1984) Corp. v. Coastal Carriers Corp.*, 981 F.2d 952, 953 (5th Cir. 1993).

#### PRAYER FOR RELIEF

WHEREFORE, the petitioning Defendants respectfully request as follows:

1. That this Court compel Rad2Go, Inc. and the petitioning Defendants to arbitrate the disputes set forth in the Complaint according to the terms of the written arbitration clause in the Representative Agreement;

2. That this Court stay Rad2Go, Inc.'s Complaint until arbitration is completed; and

3. For such other relief as the Court or arbitrator deems just and proper.

DATED: July 3, 2008

KIRBY NOONAN LANCE & HOGE LLP

By: /s/Jacob M. Slania

David J. Noonan

Jacob M. Slania

Jill E. Randall

Attorneys for Defendants NATIONAL  
SPORTING GOODS, DAVID JACOBS, and  
GREGG ADELSHEIMER

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

MARLIESE WEED on behalf of herself and  
others similarly situated, ,

Plaintiff,

vs.

AMERICA'S COLLECTIBLES NETWORK,  
INC. D/B/A JEWELRY T.V. ,

Defendant.

CASE NO. 08-CV-0925 WQH CAB

**[PROPOSED] ORDER GRANTING  
JOINT MOTION FOR CONTINUANCE  
OF HEARING ON MOTION TO DISMISS**

A joint motion was filed by all parties in the above referenced action on July 3, 2008 requesting that the hearing on Defendant's Partial Motion to Dismiss Pursuant to F.R.C.P. 12(b)(6), currently set for July 21, 2008, be continued to August 18, 2008, or as soon thereafter as set by the court. After reviewing the papers filed,

IT IS HEREBY ORDERED that the hearing on Defendant's Partial Motion to Dismiss Pursuant to F.R.C.P. 12(b)(6) scheduled for July 21, 2008 shall be continued to August 18, 2008.

IT IS SO ORDERED.

DATED:

\_\_\_\_\_  
United States District Court Judge

**PROOF OF SERVICE****Weed v. America's Collectibles Network, Inc. dba Jewelry Television**

United States District Court, Southern District of California

Case No. 08 CV 0925 WQH (CAB)

I, the undersigned, declare: That I am, and was at the time of service of the papers herein referred to, over the age of eighteen years, and not a party to the action; and I am employed in the County of San Diego, California. My business address is 350 Tenth Avenue, Suite 1300, San Diego, California 92101-8700.

On July 3, 2008, at San Diego, California, I served the following document(s) described as

**JOINT MOTION FOR CONTINUANCE OF HEARING ON MOTION TO  
DISMISS; AND**

**[PROPOSED] ORDER GRANTING JOINT MOTION FOR CONTINUANCE OF  
HEARING ON MOTION TO DISMISS**

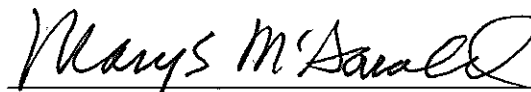
on the parties in said action by placing a true copy thereof in a separate sealed envelope for each addressee named hereafter, addressed to each such addressee respectively as stated on the attached service list, which reflects the address last given by each such addressee on any document filed in the action and served on this office.

**SEE ATTACHED LIST**

☒ **BY MAIL:** I am readily familiar with our business practice for collecting, processing and mailing correspondence and pleadings with the United States Postal Service. Such correspondence and pleadings are deposited with the United States Postal Service on the same day that they are placed for mailing in the ordinary course of business. I sealed each envelope and, with the postage thereon fully prepaid, placed it for mailing in accord with our business' practice. (C.C.P. § 1013(a) and (b))

☒ **ELECTRONIC TRANSMISSION:** I filed the foregoing document with the Clerk of Court for the United States District Court, Southern District of California, using the Electronic Case Filing ("ECF") system of the Court. The attorney listed above has consented to receive service by electronic means and is registered with the Court's ECF system and was served a "Notice of Electronic Filing" sent by ECF system.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 3, 2008, at San Diego, California.

  
Mary S. McDonald

**SERVICE LIST**  
**Weed v. America's Collectibles Network, Inc.**  
**Case No. 08-CV-0925 WQH CAB**

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